



Arbitrary Justice: The Power of the American Prosecutor

Angela J. Davis

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Inscribed on the walls of the United States Department of Justice are the lofty words: "The United States wins its point whenever justice is done its citizens in the courts." Yet what happens when prosecutors, the most powerful officials in the criminal justice system, seek convictions instead of justice? Why are cases involving educated, well-to-do victims often prosecuted more vigorously than those involving poor, uneducated victims? Why do wealthy defendants frequently enjoy more lenient plea bargains than the disadvantaged?

In this timely work, Angela J. Davis examines the expanding power of prosecutors, from mandatory minimum sentencing laws that enhance prosecutorial control over the outcome of cases to the increasing politicization of the office. Drawing on her dozen years of experience as a public defender, Davis demonstrates how the everyday, legal exercise of prosecutorial discretion is responsible for tremendous inequities in criminal justice.

Davis uses powerful stories of individuals caught in the system to illustrate how the day-to-day practices and decisions of well-meaning prosecutors produce unfair and unequal treatment of both defendants and victims, often along race and class lines. These disparities are particularly evident in prosecutors' charging and plea-bargaining decisions and in their muddy relationships with victims.

Prosecutors not only hold vast power, Davis argues, but they are also under-regulated and lack accountability. The current standards of practice for prosecutors are unenforceable, while the mechanisms that purport to hold prosecutors accountable are weak and ineffectual. Not only does lack of oversight result in injustices, it may even foster a climate tolerant of unfair practices and in some cases, misconduct.

Offering a sensible agenda for comprehensive review and reform, *Arbitrary Justice* challenges the legal community and concerned citizens to pursue and enact meaningful standards of con

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Kirby says

I'm so frustrated by what Davis reveals that I want to write this review in all caps to get people to pay attention. Prosecutors, at all levels, have unchecked power with no transparency or accountability for the decisions they make and there is virtually nothing to be done about it. They can "overcharge" (tack on charges that they know they cannot prove beyond a reasonable doubt) a criminal defendant, in order to better position themselves during plea bargaining and trial. They can impose expiration dates on plea offers that make it impossible for defense attorneys to effectively counsel their clients. They can withhold evidence that would help defendants make better decisions about pleas. It's shameful.

This will continue to be the case for several reasons. Very few are inclined to lobby for the rights of criminal defendants in general. So frightened by the media and persistent portrayals of criminals as poor and of color, most people will trade prosecutorial misconduct for "keeping the streets safe." Criminal defense attorneys who are repeat players with prosecutors can't afford to be the squeaky wheels. Prosecutors are not inclined to give up power (who is?), think self-regulation is sufficient, and avoid understanding the collective injustice of how their decisions are made.

Davis recommends that we get bar associations to take the disciplinary process for attorney misconduct seriously, better inform the public, mandate racial disparity studies, and create prosecution review boards. The last option seems the most practical, but I'm not holding my breath for this or any other reform. As long as people continue to believe in prosecutors as fearless protectors of the people, as opposed to people who are human, fallible, and subject to the same conscious and unconscious prejudices that undergird society, little will change. For now, I'll watch less Law & Order and donate more to Legal Aid.

Dakota McCoy says

This book was an outstanding explanation of the immense discretion held by prosecutors. It's not something the average person (myself included) knows much about, which is exactly part of the problem- in theory we vote our cruel or unfair prosecutors, but that is a totally ineffective check on their power. Mandatory minimums, the power and discretion of charging decisions and plea bargains, and the fact that so much takes place behind closed doors and so few people actually go to trial— prosecutors are perhaps the most powerful and arbitrary dealers of justice in the USA. A necessary and depressing read! She does offer suggestions for reform.

One more note: it was almost completely readable to a non-expert, with good explanations and examples to illustrate laws and protocols.

Vasja Volin says

Well-written and well-argued. This book makes a great case for improving the laws surrounding prosecution to reduce bias and improve the justice system.

Dave Mac says

Informative, but somewhat repetitive. Definitely a book that should be read by those who do not understand the prosecutorial function in the US justice system, particularly the broad discretionary power that prosecutors have to shape the outcome of criminal cases.

Alisa says

if you've taken criminal law, then you probably know most if not all of this book. but it's extremely well compiled! if you haven't taken criminal law, this could be mind-blowing.

Adam says

Super interesting read. Learned lots of new things (some frightening, some enlightening). What I admired most about Davis's work was her willingness to acknowledge and confront the complexity of the issue (of prosecutorial accountability and misconduct) while continuing to advocate for oversight and solutions to problems. There ARE some sections that read much more technical than I would have expected for a book marketed for the general public -- though I think the general public is more than capable of understanding all parts of this work. Her work certainly inspired me to think a bit differently about how I understand and vote for attorney general and publicly elected prosecutors.

Helen says

The author does an excellent job of showing in laymen terms the power of Prosecutors in the US and how this can affect the incarceration rate. It is an eye-opener and details how Prosecutors are rarely disciplined or monitored! She explains how Prosecutors produce unjust results in many cases.

Sam Newton says

Fantastic critique of the power of American prosecutors and how, in their zeal, they often abuse their power. I did not, however, think that Davis gave concrete solutions to this very real problem. William Stuntz has proposed better solutions in his *The Collapse of American Criminal Justice*.
